

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 14, 2009

D055735 Rodriguez v. Rose

Because appellant did not timely pay the filing fee, the appeal is dismissed.
(Cal. Rules of Court, rule 8.100(c)(3).)

D054437 In re Emmanuel M., a Juvenile

The orders are affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

D053950 People v. Bradford

The judgment is affirmed. Haller, Acting P.J.; We Concur: Aaron, J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. Moore

D053607 People v. LEE

Cause called on merits. John J. Lanahan, Esq. argued for appellant. Gary Schons, Deputy Attorney General, argued for respondent. Mr. Lanahan replied. Cause submitted.

D053366 Manoogian v. San Diego Unified School District

Cause called on merits. Bradley K. Moores, Esq. argued for appellant. Victoria Fuller, Esq. argued for respondent. Mr. Moores replied. Cause submitted.

D054084 Betancourt et al. v. A.M. Ortega Construction, Inc.

Cause called on merits. Matthew W. Holder, Esq. argued for appellant. J. David Sackman, Esq. argued for respondent. Mr. Holder replied. Cause submitted.

Court recessed at 10:00 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D054212 Page v. Miracosta Community College District et al.

Cause called on merits. Ronald James Cozad, Esq. argued for appellant. Jack M. Sleeth, Esq. argued for respondent, Miracosta Community College District. Randall I. Winet, Esq. argued for respondent, Richart. Mr. Cozad replied. Cause submitted.

Court recessed at 11:00 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 14, 2009 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and James McIntyre
Clerk: D. Moore

D053218 McGuire v. 235 On Market Homeowners Association
D054131 McGuire v. 235 On Market Homeowners Association
Cause called on merits. David A. Kay, Esq. argued for appellant.
Daniel J. Williams, II, Esq. argued for respondent. Laura V. Kwiatkowski, Esq.
argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 2:18 p.m. to change panel members.
New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and James McIntyre

D055147 People v. Nesby et al.
Cause called on merits. Mark Devore, Esq. argued for appellant.
Elizabeth Ann Hartwig, Deputy Attorney General, argued for respondent.
Cause submitted.

Court recessed at 2:31 p.m. to change panel members.
New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Gilbert Nares and James McIntyre

D054425 Fuselier v. Bartenbach
Cause called on merits. Mark Davin Stavros, Esq. argued for respondent.
Lowell Robert Fuselier, argued for appellant, in pro per. Cause submitted.

D052995 Wood v. Janopaul Block S.D. NO. 1, LLC et al.
Cause called on merits. Robert Wood, argued for appellant in pro per.
Neal P. Panish, Esq. argued for respondent. Mr. Wood replied. Cause submitted.

D053620 Howell v. Hamilton Meats Provisions, Inc.
Cause called on merits. John J. Rice, Esq. argued for appellant. Scott Sumner, Esq.
argued for amicus curiae for appellant. Robert Francis Tyson, Esq. argued for
respondent. Mr. Rice replied. Cause submitted.

Court recessed at 3:28 p.m. to change panel members.
New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Gilbert Nares and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 14, 2009 (Continued)

D054608 People v. Booker

Cause called on merits. Rebecca P. Jones, Esq. argued for appellant.
Elizabeth Ann Hartwig, Deputy Attorney General, argued for respondent. Ms.
Jones replied. Cause submitted.

Court recessed at 3:51 p.m. until Tuesday, September 15, 2009 at 9:00 a.m.

D055741 In re Marriage of Tighe

Because appellant did not timely pay the filing fee, the appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 15, 2009

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D053580 Sycamore Ridge Apartments v. Naumann
Cause called on merits. David A. Kay, Esq. argued for appellant.
Jeffrey K. Miyamoto, Esq. argued for respondent, Naumann et al.
Robert F. Semmer, Esq. argued for respondent, LaFave et al. Mr. Kay replied.
Cause submitted.

Court recessed at 9:22 a.m. to change panel members.
New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Richard Huffman and Cynthia Aaron

D053929 Aronow v. Aronow
Cause called on merits. Elizabeth Anne Kreitzer, Esq. argued for appellant.
Andy Cook, Esq. argued for respondent. Mr. Kreitzer replied. Cause submitted.

Court recessed at 9:44 a.m. to change panel members.
New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Patricia Benke and Richard Huffman

D053743 Rivkin v. Kennerson & Grant, LLP et al.
Cause called on merits. Daniel U. Smith, Esq. argued for appellant.
Matthew V. Herron, Esq. was present in oral argument with Mr. Smith, but did not
argue. Robert Semmer, Esq. argued for respondent. Mr. Smith replied. Cause
submitted.

Court recessed at 10:18 a.m. to change panel members.
New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Richard Huffman and James McIntyre

D055355 Pineda et al. v. Williams-Sonoma Stores, Inc.
Cause called on merits. Gene Joseph Stonebarger, Esq. argued for appellant.
Phillip Craig Cardon, Esq. argued for respondent, Williams-Sonoma Stores, Inc.
Todd Atkins, Esq. argued for amicus curiae for appellant. Mr. Stonebarger replied.
Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
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D052416 Behne v. Chodur

D053551 Behne v. Chodur

Cause called on merits. Edward I. Silverman, Esq. argued for appellant.
Jon R. Williams, Esq. argued for respondent. Mr. Silverman replied.
Cause submitted.

Court recessed at 11:17 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Terry O'Rourke
Clerk: D. Moore

D052970 People v. Mitchell

Cause called on merits. Martin Kassman, Esq. argued for appellant. Lilia Garcia,
Deputy Attorney General, argued for respondent. Mr. Kassman replied. Cause
submitted.

Court recessed at 1:36 p.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D053593 People v. Islasmacias

Cause called on merits. John L. Staley, Esq. argued for appellant.
Marcela McLaughlin, Deputy Attorney General, argued for respondent.
Mr. Staley replied. Cause submitted.

D054136 King v. Johnston

Cause called on merits. Ralph E. Hughes, Esq. argued for appellant.
William F. Roche, Esq. argued for respondent. Mr. Hughes replied.
Cause submitted.

D052711 Urquhart et al. v. Del Mar Country Club

Cause called on merits. Michael F. Cressey, Esq. argued for appellant.
Donald N. David, Esq. argued for respondent. Mr. Cressey replied.
Cause submitted.

Court recessed at 2:36 p.m. to change panels.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D055138 People v. Mercado et al.

Cause called on merits. Michael Neil Friedman, Esq. argued for appellant, Schumm. Nancy L. Tetreault, Esq. argued for appellant, Mercado. Gerhart Wilhelm Brozio, Deputy Attorney General, argued for respondent. Mr. Friedman replied. Ms. Tetreault replied. Cause submitted.

D054918 In re D.C., a juvenile

Cause called on merits. Sahyeh Samantha Fattahi, Esq. argued for appellant. Valerie Lankford, Esq. argued for the minor. Lisa Maldonado, Deputy County Counsel, argued for respondent. Ms. Fattahi replied. Cause submitted.

Court recessed at 3:35 p.m. until Thursday, September 17, 2009 at 9:00 a.m.

D055244 In re K.D.K., a Juvenile

The appeal is dismissed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Nares, J.,

D052483 Abasolo et al. v. Crystalview Technology Corp.

The nonpublished opinion filed on September 8, 2009, is modified as follows: On page 76, under the hearing Disposition, in the second paragraph, the [Labor Code] section in the sentence following (1), is changed to: section 510. No change in judgment.

D055868 P.A., v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The Court has received Notices of Intent for Superior Court case numbers J517052A-C, J517053A-B and J511465A&C and all were assigned Court of Appeal case number D055868. The Notices of Intent are not from hearings where the matter was referred to a Welfare & Institutions Code section 366.26 hearing. The case is dismissed.

D054178 People v. Jackson

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., McDonald, J.

D054788 People v. Dickenson

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., McIntyre, J.

D054735 In re M.C., a Juvenile

The judgment is affirmed.
McDonald, J.; We Concur: McConnell, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D055867 People v. S.M., a Juvenile

The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refiling a notice of appeal after an appealable order or judgment has been entered.

D055626 In re Jeffries on Habeas Corpus

The petition is denied.

D055840 In re Willis, Jr. on Habeas Corpus

The petition is denied.

D055000 Affordable Housing Coalition of San Diego County et al. v. City of San Diego

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D055615 Taylor v. Kmart Corporation et al.

The court has received and considered plaintiff's counsel's letter dated August 27, 2009, addressing the issue of whether the appealed judgment is an appealable final judgment in light of the parties' stipulation to stay proceedings on defendants' cross-complaint against plaintiff. The matter having been considered by Presiding Justice McConnell and Associate Justices McIntyre and Aaron, the appeal is dismissed on the ground the appealed judgment is not final due to the unresolved cross-complaint. The parties cannot create appellate jurisdiction by stipulation where none otherwise exists (*Harrington-Wisely v. State of California* (2007) 156 Cal.App.4th 1488, 1494, fn. 6; *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434, 446), and no effect can be given to a "Final Judgment" label if the judgment does not in fact conclude matters between the parties. (*Jackson v. Wells Fargo Bank* (1997) 54 Cal.App.4th 240, 244.)

D055611 In re Busch on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052463 Dietz v. Meisenheimer and Herron et al.

(Certified for Publication) The judgment is affirmed. Dietz is entitled to costs on appeal. Aaron, J.; We Concur: McConnell, P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
 The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D054197 Esquivel v. WCAB

Matter called on merits. Thomas I. Hampton, Esq. argued for petitioner.
Matthew David Hurlimann, Esq. argued for respondent. Mr. Hampton replied.
Matter submitted.

Court recessed at 9:12 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D054083 Somo et al. v. Larson et al.

Cause called on merits. John H. Reaves, Esq. argued for appellant.
David Cardone, Esq. argued for respondent. Cause submitted.

D053444 City of San Diego v. Brumfield et al.

Cause called on merits. Keith H. Rutman, Esq. argued for appellant.
Linda Peter, Deputy City Attorney, argued for respondent. Mr. Rutman replied.
Cause submitted.

D053586 Schuelke et al. v. Quinn

Cause called on merits. Gregory P. Goonan, Esq. argued for appellant.
Darren Quinn, Esq. argued for respondent. Cause submitted.

D052389 M&F Fishing, Inc., et al. v. Copitas

Cause called on merits. Patrick D. Webb, Esq. argued for appellant.
Eric Danoff, Esq. argued for respondent. Mr. Webb replied. Cause submitted.

Court recessed at 10:17 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 17, 2009 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D053429 Garcia v. City of San Diego et al.
Cause called on merits. Alan L. Geraci, Esq. argued for appellant.
Dale A. Hilmen, Esq. was present in oral argument for respondent, but did not
argue. Walter Chung, Deputy City Attorney, argued for respondent. Mr. Geraci
replied. Cause submitted.

D053256 Casteen Construction, Inc. v. Farwest American Enterprises, Ltd. et al.
Cause called on merits. Alex Papaefthimiou, Esq. argued for appellant.
Sean Brew, Esq. argued for respondent. Mr. Papaefthimiou replied.
Cause submitted.

Court recessed at 2:19 p.m. to change panel members.
New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and James McIntyre

D053564 American Safety Indemnity Company v. Admiral Insurance Company
Cause called on merits. Robert A. Steller, Esq. argued for appellant.
James Derfler, Esq. argued for respondent. Mr. Steller replied. Cause submitted.

D053302 Contreras v. Ackerman et al.
Cause called on merits. David A. Kay, Esq. argued for appellant.
Jerry D. Hemme, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

D054201 I.B. v. S.T.
Cause called on merits. I.B. argued for appellant in pro per. Cause submitted.

Court recessed at 3:30 p.m. until Friday, September 18, 2009 at 9:00 a.m.

D055811 In re Thomas on Habeas Corpus
The petition is denied.

D054570 People v. Payne
The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 17, 2009 (Continued)

- D055190 In re Christian D. et al., Juveniles**
The appeal is dismissed. McDonald, J.; We Concur: McConnell, P.J., Huffman, J.
- D055044 In re Y.B., a Juvenile**
The appeal is dismissed. Nares, J.; We Concur: McConnell, P.J., Huffman, J.
- D054918 In re Damian C., a Juvenile**
The jurisdictional and dispositional orders are affirmed. The matter is remanded to the juvenile court with directions to vacate its finding that ICWA does not apply and to instruct the Agency to complete ICWA inquiry and notice. The court shall advise the parents that if Damian is determined to be an Indian child within the meaning of ICWA, they have the right to petition the court to invalidate any action in violation of 25 United States Code, sections 1911, 1912 and 1913. (25 U.S.C. § 1914.) McConnell, P.J.; We Concur: McDonald, J., Aaron, J.
- D054207 The Retirement Group v. Galante et al.**
The petition for rehearing is denied.
- D053855 Ness et al. v. Rondberg**
The unpublished opinion filed on September 4, 2009, is ordered modified.
No change in judgment.
- D054558 Toups v. Ahern Rentals, Inc.**
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.
- D055877 Pasulka v. Superior Court of San Diego County/Pasulka et al.**
The petition is denied.
- D055818 Stewart v. Superior Court of San Diego County/Stewart et al.**
The petition is denied.
- D055757 Turner v. Superior Court of San Diego County/The People**
The petition is denied.
- D055629 In re Brown II, On Habeas Corpus**
The petition is denied.
- D055229 In re Garcia, On Habeas Corpus**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 18, 2009

D055613 In re Moore on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices McIntyre and Aaron.

Petitioner asserts various grounds for relief in the petition, including (1) he was deprived of effective assistance of counsel; (2) he was denied due process because he was convicted and sentenced while incompetent; (3) his waiver of Miranda rights was invalid because he was "yet a minor and had not been classified as an adult on medication"; (4) his mental illness and prescribed medication side effects prevented him from "harboring the intent" to commit a criminal offense; (5) he was prejudiced by the court's failure to appoint an expert toxicologist to opine on the side effects of the medication he was taking at the time of the offenses; and (6) "the state must assume responsibility for Petitioner's offenses." There is no indication in the record that Moore first filed his habeas petition in superior court.

"[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court." (*In re Steele* (2004) 32 Cal.4th 682, 692.)

The petition is denied without prejudice to refiling in the San Diego County Superior Court, 220 West Broadway, San Diego, California 92101.

D055821 In re Marriage of Mataele

The petition is denied.

D055651 Morton v. The Superior Court of San Diego County/Spotts et al.

The petition is denied.

D053410 Chichi et al. v. Ennen et al.

The judgment is affirmed. Respondents are awarded their costs on appeal. Respondents' motion for sanctions is denied.
McConnell, P.J.; We Concur: Haller, J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Gilbert Nares and Judith Haller
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

September 18, 2009 (Continued)

D053162 Fariba v. Dealer Services Corporation

Cause called on merits. Zvi Aria Silver, Esq. argued for appellant, Fariba. Paula Harrelson, Esq. argued for appellant, Dealer Services. Mr. Silver replied. Mr. Silver replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members.

New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D053054 International Poly Bag, Inc. v. Neill et al.

Cause called on merits. Kenneth L. Valinoti, Esq. argued for appellant. Jerry D. Hemme, Esq. argued for respondent. Mr. Valinoti replied. Cause submitted.

Court recessed at 9:48 a.m. to change panel members.

New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D054287 In re A.W., a minor

Cause called on merits. Leslie A. Barry, Esq. argued for appellant. Suzanne Evans, Esq. argued for the minor. Susan Bookout, Esq. argued for respondent. Ms. Barry replied. Cause submitted.

Court recessed at 10:14 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Terry O'Rourke

Clerk: D. Moore

D054424 Boroogeni v. Alleyne

Cause called on merits. Charles C. Alleyne, argued for appellant in pro per. Cause submitted.

D053731 Evans et al. v. Lasco Bathware, Inc.

Cause called on merits. Douglas W. Grinnell, Esq. argued for appellant. Richard Hays Martha, Esq. argued for respondent. Mr. Grinnell replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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September 18, 2009 (Continued)

D053933 Wright v. City of San Diego

Cause called on merits. Sandra Wright, argued for appellant in pro per. William A. Calders, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

D053873 Hermiz et al. v. Brenex, LLC

Cause called on merits. Mike Hermiz, argued for appellant in pro per. David Baumgarten, Esq. argued for respondent. Cause submitted.

D053371 Hylton v. Rogozienski, Inc., et al.

Cause called on merits. Gerald L. McMahon, Esq. argued for appellant. Stephen M. Hogan, Esq. argued for respondent. Mr. McMahon replied. Cause submitted.

Court adjourned at 2:40 p.m.

D054176 People v. Broderick

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., Aaron, J.

D053667 People v. Tran

The petition for rehearing is denied.

D055740 In re Daughtery on Habeas Corpus

The petition is denied.

D055600 In re Werner on Habeas Corpus

The petition is denied.

D055850 Sellers v. Engler

The petition for writ of supersedeas, request for stay and "application for petition for writ of supersedeas to be treated as opening brief and for exhibits to be accepted as appellant's appendix" have been read and considered by Presiding Justice McConnell and Associate Justices McIntyre and Aaron. The application is denied. The petition is denied.

D055185 McKenzie v. Hernandez

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issued immediately. (Cal. Rules of Court, rule 8.244(c)(2).)